

4981  
No.....

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IN THE  
United States <sup>9</sup>  
Circuit Court of Appeals  
For the Ninth Circuit

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E. H. SMITH, D. W. McBRIER, F. B. Mc-  
BRIER, ALICE M. BETHEL, CHARLES A.  
OWEN, MORRIS K. RODMAN, and ETHEL  
W. JOHNSTON, for themselves and others simi-  
larly situated, *Appellants,*

vs.

BOISE CITY, a municipal corporation, and  
THOMAS F. RODGERS, as City Treasurer of  
said Boise City, *Appellees.*

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Transcript of the Record

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On Appeal from the District Court of the United  
States for the District of Idaho,  
Southern Division.

FILED

SEP 20 1938



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Transcript of the Record

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On Appeal from the District Court of the United States for the District of Idaho,  
Southern Division.

NAMES AND ADDRESSES OF  
ATTORNEYS OF RECORD

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IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF IDAHO, SOUTHERN DIVISION

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E. H. SMITH, D. N. McBRIER, F. B. McBRIER, ALICE M. BETHEL, CHARLES A. OWEN, MORRIS K. RODMAN, and ETHEL W. JOHNSTON, for themselves and others similarly situated, *Plaintiffs,*

—vs—

BOISE, CITY, a municipal corporation, and THOMAS F. RODGERS, as City Treasurer of said Boise City, *Defendants.*

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IN EQUITY

No. 1956

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COMPLAINT AS  
AMENDED

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Come now the above named plaintiffs, and complain of said defendants, and for cause of complaint allege and show:

I.

That E. H. Smith, one of the plaintiffs herein, now is, and for many years heretofore has been, a citizen

and resident of the City of Denver, said state; that D. N. McBrier, one of the plaintiffs herein, now is and for many years last past has been a citizen and resident of the State of Pennsylvania, residing in the City of Erie, said state; that F. B. McBrier, one of the plaintiffs herein, now is and for many years last past has been a citizen and resident of the State of Pennsylvania, residing in the City of Erie, said state; that Alice M. Bethel, one of the plaintiffs herein, now is and for many years last past has been a citizen and resident of the State of Colorado, residing in the City of Denver, said state; that Charles A. Owen, one of the plaintiffs herein, now is, and for many years heretofore has been, a citizen of the State of Michigan, residing in the city of Detroit, said State; that Morris K. Rodman, one of the plaintiffs herein, now is, and for many years heretofore has been, a citizen of the State of Michigan, residing in the city of Detroit, said State; that Ethel W. Johnston, one of the plaintiffs herein, now is, and for many years heretofore has been, a citizen of the State of Colorado, residing in the City of Denver, said state;

## II.

That the defendant Boise City now is, and during all the times hereinafter mentioned was, a municipal corporation, in Ada County, Idaho, organized and existing under the laws of the State of Idaho; and the defendant Thomas F. Rodgers now is, and for more than one year last past has been, the duly appointed,



qualified and acting City Treasurer of said Boise City;

### III.

That the matter in controversy in this suit, exclusive of interest and costs, exceeds the sum or value of Three Thousand Dollars (\$3,000.00), and is wholly between citizens of different states;

### IV.

That by ordinance passed by the City Council of Boise City, and approved by the Mayor of said City, about the month of April, 1920, there was created and established Sidewalk and Curb Improvement District No. 38, in said Boise City, and thereafter such proceedings were had by the City Council and Mayor, acting for and on behalf of said Boise City and in the discharge of their duties as officers of said City, that said Boise City caused to be issued certain improvement bonds of said Local Sidewalk and Curb Improvement District No. 38, in the principal sum of \$56,539.10; that said bonds were duly signed by the Mayor of said City, attested by the City Clerk under the seal of said City, and countersigned by the City Treasurer of said City. The said bonds bore interest at the rate of 7% per annum, payable semi-annually, and the principal thereof was payable on or before the first day of January, 1932, and both principal and interest were payable at the office of the City Treasurer of said Boise City, or at the Chase National

Bank, in the City and State of New York, at the option of the holder. A full, true and correct copy of said bonds, except as to number and denomination, and without the interest coupon thereto annexed, is hereto attached, marked "Exhibit A", made a part hereof and hereby referred to for a more complete statement of the terms and provisions thereof;

## V.

That the said plaintiffs, for a valuable consideration, and without notice or knowledge of any of the negligent acts hereinafter referred to, acquired bonds so issued by said Boise City in the amounts hereinafter set forth, long prior to the first day of January, 1932, and said plaintiffs are still the owners and holders thereof, to-wit:

That the said E. H. Smith is the owner of \$2,000, par value, of said bonds, to-wit: Bonds 44, 45, 54 and 55, of the denomination of \$500.00 each,

That the said D. N. McBrier is the owner of \$7,000, par value, of said bonds, to-wit: Bonds 40 to 43, inclusive, and 56 to 65, inclusive, of the denomination of \$500.00 each,

That the said F. B. McBrier is the owner of \$5,000, par value, of said bonds, to-wit: Bonds 78 to 87, inclusive, of the denomination of \$500.00 each,

That the said Alice M. Bethel is the owner of \$1,000, par value of said bonds, to-wit: Bonds 66 and 67, of the denomination of \$500.00 each,

That the said Charles A. Owen is the owner of \$10,000 par value, of said bonds, to-wit: Bonds numbered 94 to 113, inclusive, each of the denomination of \$500.00,

That the said Morris K. Rodman is the owner of \$2,000, par value, of said bonds, to-wit: Bonds numbered 49, 51, 52, and 53, each of the denomination of \$500.00,

That the said Ethel W. Johnston is the owner of \$500.00 par value, of said bonds, to-wit: Bond No. 50, of the denomination of \$500.00,

And the said plaintiffs bring this action on behalf of themselves and all other holders of bonds of said issue, similarly situated, who may desire to share in the benefits that may be had from this action and contribute to the expense thereof;

## VI.

That plaintiffs are informed and believe, and so allege the fact to be, that bonds of said issue, of the par value or principal amount of \$37,000, maturing on or before January 1, 1932, are still outstanding and unpaid;

## VII.

That plaintiffs have duly presented their said bonds to the City Treasurer of the City of Boise on several occasions after the first day of January, 1932, but said City Treasurer has declined and still declines to make any payment thereon and states as reasons for his re-

fusal that he has only about \$2,817.57 in the fund available for the payment of said bonds and interest thereon from and after the first day of January, 1932;

### VIII.

That plaintiffs are informed and believe, and so allege the fact to be, that over \$21,000 of the funds belonging to said Local Sidewalk and Curb Improvement District 38, collected for the purpose of paying the bonds held by plaintiffs and other bondholders, have been wrongfully diverted, dissipated and lost by said Boise City through its negligence and carelessness, and through the wrongful acts, negligence and carelessness of its officers; That said city has been especially negligent and unfaithful in the discharge of its duties as statutory trustee for plaintiffs and other holders of bonds of said issue, and particularly in the following respects, but not limited thereto; that it permitted its former city clerk, who held the position of clerk of said Boise City for upwards of ten years immediately prior to the first day of September, 1933, to divert and appropriate to her own use, large sums of money of said city, including moneys collected for the payment of principal and interest on plaintiffs' said bonds; that the amount so diverted and misappropriated exceeds the sum of \$92,000.00;

That the misappropriations and diversions by said city clerk to her personal use and benefit extended over a period of approximately ten years; that plaintiffs are informed and believe, and so allege the fact to be,

that during the fiscal year ending April 30, 1927, the amount aggregated about \$2,600.00; and during the following fiscal years, ending on April 30th thereof, the amounts were approximately as follows:

1928	about	\$3,360.00
1929	“	5,000.00
1930	“	10,500.00
1931	“	13,250.00
1932	“	20,775.00
1933	“	18,600.00

and from May 1st to September 30, 1933, nearly \$12,000.00; that the total misappropriations and diversions were, as heretofore alleged, over \$92,000.00; that plaintiffs are informed and believe, and so allege the fact to be that the said misappropriations and diversions included large sums from year to year, beginning with the year ending April 30, 1924, out of the funds belonging to said Local Sidewalk and Curb Improvement District No. 38, and the aggregate of the sums so misappropriated out of the funds belonging to said district and held by said Boise City as trustee for plaintiffs and other holders of bonds of said district is over \$21,000.00, which money, if not so misappropriated and wrongfully diverted by said city clerk, would have been available for the payment of principal and interest on plaintiffs' said bonds;

### IX.

That the defendant, Boise City, failed and neglected to faithfully discharge its duty as statutory trustee for



these plaintiffs and other holders of bonds of said District No. 38, or to properly conserve, care for and handle the trust funds coming into its possession and collected from and paid by property owners in said Improvement District No. 38, for the benefit of the plaintiffs and other holders of said bonds, but, on the contrary, said defendant carelessly and negligently permitted said funds to be misappropriated and diverted to other uses and purposes as hereinbefore alleged; that the said defendant, Boise City, failed to exercise the care and prudence required of it as such statutory trustee, and was careless and negligent, as aforesaid, and particularly in the following respects among others:

(a) Said Boise City carelessly and negligently, and without using ordinary care and prudence in such matters, appointed and kept in office an unfaithful, untrustworthy and dishonest city clerk who misappropriated and diverted the funds of said city in an amount exceeding \$92,000.00, and the trust funds belonging to plaintiffs and other holders of bonds of said District No. 38 to an amount exceeding \$21,000.00; that if the Mayor and Council of said Boise City had used the care and prudence required of them in the performance of their duties as such officers, they would not have employed said city clerk and they would have discovered long prior to the year 1933 the wrongful misappropriations and diversions of funds by said city clerk;

(b) That said misappropriations and diversions of

funds were made from year to year in such a manner that any officer of said city, using ordinary care and prudence and particularly the care and prudence required of him in the discharge of his duties, should and could have ascertained and known, long prior to the time that said city clerk was removed from office or requested to resign, that such funds were being diverted and misappropriated and, by the exercise of such care and prudence, substantially all of the funds of said District No. 38 so misappropriated and diverted could have been saved to plaintiffs and other bondholders;

(c) That said Boise City had and used a system of accounting that was wholly inadequate for the proper protection of the funds so held in trust for plaintiffs and other bondholders;

(d) That said city permitted its books and records to be kept in an inadequate and inefficient manner by negligent and incompetent employees who were untrustworthy and wholly incompetent to be entrusted with the care of said trust funds;

(e) That the employees of said city kept inaccurate and false records of the funds belonging to said District No. 38, all of which could have been ascertained by the officers of said Boise City if they had used ordinary care and prudence, and especially the care and caution required of them in their official positions and in the discharge of their official duties;

(f) That because of the careless, negligent and

inefficient manner in which the books and records of Boise City were kept, since the issuance and sale of the said bonds, many of the assessments levied for the payment of plaintiffs' bonds and collections made thereunder from the landowners in said District No. 38, for the payment of principal and interest on said bonds, were credited or placed in other funds; that said Boise City wrongfully waived penalties and interest imposed by law on delinquent payments of assessments levied on the property in said District No. 38 for the payment of said bonds and interest thereon, and in many instances the assessments so levied were thereafter wrongfully cancelled or rebated to the property owners; that said Boise City and the officers thereof charged with the duty of levying assessments for the payment of said bonds and interest thereon, failed and neglected to make the assessments required to be made therefor; that said Boise City failed to collect from Ada County sums belonging to said trust fund under assessments levied for the payment of said bonds and which sums were collected by Ada County and should have been paid to said Boise City and placed in said trust fund, and such payments would have been made by Ada County if the defendant, Boise City, and the officers thereof had used due care and prudence in caring for and conserving said trust fund and collecting or demanding the payments so made to said Ada County for the use of said fund; that because of the carelessness and the negligence and wrongful acts of said defendant, Boise City, in the perform-



ance of its duties as statutory trustee, assessments levied for the payment of said bonds and interest thereon were not certified to Ada County, as required by law, and large amounts payable under said assessments could not therefore be collected and the lien of the assessments preserved and maintained in effect and the collection of delinquent taxes enforced in the manner provided by law; that because of the wrongful, careless and negligent acts of said defendant, Boise City, and its officers charged with the duty of accumulating, conserving and maintaining said trust fund, large sums aggregating, as plaintiffs are informed and believe and so allege the fact to be, several thousand dollars have been lost to said trust fund but the exact amount thereof cannot be ascertained or known until a full, true and correct account is made by said statutory trustee of its actions and doings as such trustee;

That said Boise City has wrongfully paid to the holders of bonds numbered 1 to 39, inclusive, the full or face amount of said bonds, which was greatly in excess of their prorata or equitable share of the moneys collected by said city for the payment of all bonds issued and outstanding, and such payments were made when Boise City and its officers knew or should have known that the assessments levied would not create a fund sufficient for the payment of said bonds and interest thereon in full.

(g) That the defendant, Boise City, without the knowledge or consent of plaintiffs, compromised and

settled the claim against the sureties on the bonds of the city clerk, who had misappropriated over \$92,000.00, as aforesaid, of the funds of said Boise City, including over \$21,000.00 of the funds belonging to said District No. 38, which surety bonds aggregated upwards of \$30,000.00, but said defendant, Boise City, accepted in full satisfaction and discharge of its claim against said sureties the sum of \$14,500.00; that said defendant, Boise City, has not transferred any part of the moneys so collected from said sureties into said trust fund; that said settlement and compromise was made on or about the month of March, 1936 and said sum of \$14,500.00 was paid by said sureties to the Treasurer of said Boise City on or about said date;

### X.

That the condition of said trust fund so required to be collected, conserved, maintained and held available for the payment of plaintiffs' bonds and interest thereon, cannot be ascertained or determined without the making of a full, true and correct account of the acts of said defendant, Boise City, showing the assessments made by said city for the payment of said bonds, the amounts collected with interest and penalties thereon, the amount of the assessments, penalties and interest cancelled, rebated and otherwise lost to said bondholders through the wrongful, negligent and careless acts of said Boise City and the officers thereof; that said assessments covered a period of upwards of about 10 years and several hundred separate lots, pieces and

tracts; that plaintiffs are remediless in the premises unless the defendant, Boise City, furnishes a true and correct account of its acts and doings as such trustee; that under the circumstances all of said payment of \$14,500.00 made to said Boise City by the sureties on the bonds of the city clerk should be placed in said trust fund and the defendant, Boise City, should be required to make good any other loss sustained by said trust fund through the wrongful, careless and improper acts of said defendant, including loss sustained in settling with said sureties on the clerk's bonds for less than the amount for which the sureties were liable;

### XI.

That there is due and owing from said Boise City to the plaintiffs herein the following sums with interest thereon at the rate of seven percent per annum from the 1st day of January, 1932, to-wit:

- To said E. H. Smith, \$2,000.00;
- To said D. N. McBrier, \$7,000.00;
- To said F. B. McBrier, \$5,000.00;
- To said Alice M. Bethel, \$1,000.00;
- To said Charles A. Owen \$10,000.00;
- To said Morris K. Rodman \$2,000.00;
- To said Ethel W. Johnston, \$500.00.

WHEREFORE, plaintiffs pray:

(a) That the defendant, Boise City, be required to make a full and true account of its acts as statutory trustee for the boldholders of said Local Sidewalk and

Curb Improvement District No. 38, showing the assessments levied for said fund, the collections made, the amount paid out for principal and interest out of said fund, the amount of the assessments, penalties and interest cancelled or rebated, the amount certified if any from time to time to the officers of Ada County for collection, the amount received from said Ada County on account of the assessment so certified and all other acts and things necessary to correctly show the performance of the duties of said Boise City, as statutory trustee;

(b) That it be adjudged and decreed that the amount collected, to-wit: \$14,500.00 from the sureties on the bonds of the city clerk should be transferred to the trust fund of said District No. 38 and made available for the payment of principal and interest on plaintiffs' bonds and that said defendants be required to pay to plaintiffs, out of said trust fund, the amount due them, respectively, to-wit:

To the said E. H. Smith, \$2,000.00, with interest at 7% from the 1st day of January, 1932;

To the said D. N. McBrier, \$7,000.00, with interest at 7% from the 1st day of January, 1932;

To the said F. B. McBrier, \$5,000.00, with interest at 7% from the 1st day of January, 1932;

To the said Alice M. Bethel, \$1,000.00, with interest at 7% from the 1st day of January, 1932;

To the said Charles A. Owen, \$10,000.00, with interest at 7% from the first day of January, 1932;

To the said Morris K. Rodman, \$2,000.00, with interest at 7% from the first day of January, 1932;

To the said Ethel W. Johnston, \$500.00, with interest at 7% from the 1st day of January, 1932.

(c) That if the said trust fund be insufficient to pay the amount due plaintiffs, as aforesaid, that plaintiffs may have judgment against said Boise City for any deficiency and for their costs herein;

(d) That plaintiffs may have such other relief as may be just and equitable.

RICHARDS & HAGA

and

OLIVER O. HAGA

Solicitors for Plaintiffs

Residing at Boise, Idaho

(Duly Verified)

EXHIBIT A.

NUMBER

40

DOLLARS

500

UNITED STATES OF AMERICA

— : —

State of Idaho

County of Ada

CITY OF BOISE CITY

Improvement Bond of

Local Sidewalk and Curb Improvement District

No. 38

KNOW ALL MEN BY THESE PRESENTS,

That the City of Boise City, in the County of Ada, and State of Idaho, acknowledges itself to owe and for value received hereby promises to pay to the bearer hereof the principal sum of

### FIVE HUNDRED DOLLARS

in lawful money of the United States of America, on or before the first day of January, A. D. 1932, together with interest on said sum from the date hereof until paid at the rate of seven per centum per annum, payable semi-annually on the first days of January and July, respectively, in each year, as evidenced by and upon the presentation and surrender of the interest coupons hereto attached as they severally become due, both principal hereof and interest hereon payable at the office of the city treasurer in Boise City, Idaho, or at the Chase National Bank, in the City and State of New York, U. S. A., at the option of the holder, out of the local improvement fund heretofore created for the payment of the costs and expenses of the improvement constructed in Local Sidewalk and Curb Improvement District No. 38 in said city, and not otherwise.

This Bond is issued by said city for the purpose of providing funds for the payment of the costs and expenses of constructing the improvements in said Local SideWalk and Curb Improvement District No. 38, pursuant to, by virtue of and in all respects in full and strict compliance with the constitution of the State of Idaho, Article 3 and Article 6 of Chapter 163 of



Title XXXII of the Idaho Compiled Statutes 1919, and all laws of said state supplementary thereto and amendatory thereof.

And it is hereby certified, recited and warranted that said city is now and for many years past has been a city of said state and a body politic and corporate, duly organized, existing and operating under and by virtue of the constitution and laws of the state of Idaho, and is now and always has been under the control of a duly organized mayor and council as the duly constituted corporate authority thereof; that all things, acts and conditions required by the constitution and laws of the State of Idaho and the ordinances of said city to exist and to happen and be done and performed precedent to and in the creation of the said Local Sidewalk and Curb Improvement District No. 38 and the construction of the improvements therein and the issuance of this Bond in order to constitute this Bond a valid and binding obligation of said city, payable as aforesaid, do exist and have happened and been done and performed in regular and due form and time; that the costs and expenses of said improvements which this Bond has been issued to pay have been duly levied and assessed as special taxes upon all of the lots, pieces and parcels of land in said Local Sidewalk and Curb Improvement District No. 38, separately and in addition to all other taxes, and said special assessments are a lien upon said lots, pieces and parcels of land; that due provision has been made for the collection of said special assessments, together with interest on un-

paid installments thereof at the rate of seven per centum per annum sufficient to pay the interest hereon promptly when and as the same falls due and also to discharge the principal hereof at maturity.

In conformity with Section 4026 Idaho Compiled Statutes 1919, it is hereby recited that "The holder of any bond issued under the authority of this article shall have no claim therefor against the municipality by which the same is issued, in any event, except for the collection of the special assessment made for the improvement for which said bond was issued, but his remedy in case of nonpayment, shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on the face of each bond so issued."

IN TESTIMONY WHEREOF, the City of Boise City, Ada County, Idaho, by its City Council has caused this Bond to be signed by the Mayor of said City, attested by the City Clerk thereof and countersigned by the City Treasurer and sealed with the corporate seal of said City as of the first day of January, A. D. 1922.

Eugene B. Sherman

Mayor

COUNTERSIGNED:

Florence G. Bush

ATTEST:

City Treasurer

Angela Hopper

City Clerk

(SEAL OF BOISE CITY)



(Title of Court and Cause.)

---

ANSWER

Filed March 27, 1937.

COMES now the defendants, Boise City, a municipal corporation, and Thomas F. Rodgers, as City Treasurer of said Boise City, and answers the bill of complaint of plaintiffs on file herein as the same is amended and for answer thereto admit, deny and allege as follows:

I.

Said defendants admit all the allegations of Paragraphs I, II, III, IV, VI and VII of said bill of complaint.

II.

That these answering defendants have no knowledge of the facts alleged in Paragraph V of the bill of complaint and therefore deny the allegations therein contained.

III.

Answering Paragraph VIII of said bill of complaint, defendants deny that over \$21,000.00 or any other sum belonging to Local Sidewalk and Curb Improvement District 38, collected for the purpose of paying the bonds held by plaintiffs or other bondholders, has been diverted or dissipated or lost by Boise City through its negligence or carelessness, or through

any wrongful acts, negligence, carelessness, or otherwise, of its officers; deny that said city has been negligent or unfaithful in the discharge of any duty or duties as statutory trustee or otherwise for plaintiffs or other holders of bonds of said issue; admits that a former city clerk, Angela Hopper by name, who held the position of clerk of said Boise City for upwards of ten years immediately prior to the first day of September, 1933, diverted and appropriated to her own use large sums of money and admits that the said Angela Hopper diverted and appropriated to her own use moneys received by her for the payment of principal and interest on plaintiffs bonds and admits that the total amount of all sums diverted and appropriated by the said Angela Hopper exceeds the sum of \$92,000.00.

In that connection defendants allege: that C. S. Section 4013 now Section 49-2715 I. C. A. provides:

“All such assessments shall be known as special assessments for improvements and shall be levied and collected as a separate tax, in addition to the taxes for general revenue purposes, to be placed on the tax roll for collection, subject to the same penalties and collected in the same manner as other municipal taxes.”,

and that subsection 14 of Section 48 of the Charter of Boise City contains exactly the same provisions,

That on or about 1920 and prior to the organization of Local Sidewalk and Curb Improvement Dis-

trict No. 38, the City of Boise was operating its city government under and pursuant to the provisions of what is known as the Black Law, the general statutes of Idaho for municipalities, and that said section 4013 Compiled Statutes now Section 49-2715 I.C.A. was in force and applicable at said time and at all times subsequent thereto. That in the spring of 1927, said City elected to and did again operate its city government under and pursuant to the provisions of the City Charter of Boise City, Idaho, which Charter as amended by the Legislature of Idaho in 1927 contained subsection 14 of Section 48 as above alleged, and still so operates.

Defendants admit that the misappropriations and diversions by the said Angela Hopper to her personal use and benefit extended over a period of approximately ten years; admit that during the fiscal year ending April 30, 1927, the amount there of aggregated about \$2,600.00, and that during the following fiscal years, ending on April 30th thereof, the amounts were approximately as follows:

1928 about	\$3,360.00
1929 about	\$5,000.00
1930 about	\$10,500.00
1931 about	\$13,250.00
1932 about	\$20,775.00
1933 about	\$18,600.00

and from May 1st to September 30, 1933, nearly \$12,000.00, and admits that the total misappropriations

and diversions were over \$92,000.00 but in this connection defendants allege that of the sums misappropriated and diverted by the said Angela Hopper, only the following amounts thereof were funds received, collected and held by her as City Clerk of the defendant Boise City.

1927	\$405.50
1928	\$1209.83
1929	\$1508.97
1930	\$1669.64
1931	\$3956.90
1932	\$5830.45
1933	\$5399.52
May 1, 1933, to	
September 30, 1933	\$7696.19
	<hr/>
Total	\$27677.00

and alleges that the misappropriations and diversions by the said Angela Hopper collected by her as city clerk of Boise City and received and held by her in her official position did not exceed the sum of \$27,677.00; admits that said misappropriations and diversions included sums from year to year, beginning with the year ending April 30, 1924, out of funds belonging to said Local Sidewalk and Curb District No. 38, but deny that the aggregate of the sums misappropriated out of funds belonging to said district was over \$21,000.00 or any other sum in excess of the sum of \$2,242.92, or in any other manner than by Angela Hop-

per individually and deny that said money or any part or portion thereof was misappropriated or wrongfully diverted by said city clerk as an officer of Boise City or in any other capacity than individually; defendants do not have sufficient information or knowledge as to whether any of said moneys would have been available for the payment of principal and interest on plaintiffs bonds had the same not been misappropriated or diverted and therefore deny said allegation and the whole thereof.

#### IV.

Answering Paragraph IX of said bill of complaint, and particularly subparagraph (g) thereof, defendants admit that the defendant Boise City compromised and settled a claim against the sureties on the bonds of the city clerk, which surety bonds aggregated upwards of the sum of \$30,000.00, and that Boise City accepted in full satisfaction and discharge of its claim against said sureties the sum of \$14,500.00; admits that defendant, Boise City, has not transferred any part of the moneys so collected from said sureties into any trust fund; and admits that said settlement and compromise was made on or about the month of March, 1936, and that said sum of \$14,500.00 was paid by said sureties to the Treasurer of Boise City on or about said date. Defendants deny that said city clerk of Boise City had misappropriated \$92,000.00 of the funds of said Boise City or any other amount in excess of \$27,677.00 and deny that said sum included over \$21,000.00

or any sum or amount whatsoever of funds belonging to District No. 38.

Defendants deny each of the remaining allegations contained in said Paragraph IX and the whole thereof, save and except those portions of subparagraph (g) hereinabove specifically admitted.

## V.

Answering Paragraph X of said bill of complaint, defendants deny that the condition of the fund of Improvement District No. 38 cannot be ascertained, or determined without the making of a full, true or correct account of any of the acts of the defendant, Boise City; deny that any such accounting need show any assessments made by said city for the payment of said bond or the amounts collected therefrom with interest or penalties thereon; deny that any assessments, penalties or interest have been canceled, rebated or otherwise lost to bondholders through any wrongful, negligent, careless or other act of Boise City or its officers; admits that said assessments covered a period of upwards of about ten years and several hundred separate lots, pieces and tracts; deny that plaintiffs are remediless in the premises unless the defendant Boise City furnishes a true and correct account of its acts or doings and denies that any such acts or doings were in the capacity of trustee to these plaintiffs; deny that under the circumstances or otherwise that all or any part of the payment of \$14,500.00 made to said Boise City by the sureties on the bonds of the city clerk



should be placed in the fund of District No. 38 and deny that the defendant, Boise City, should be required to make good any loss sustained by said fund of District No. 38 and deny that any loss occurred to said fund through or by any wrongful, careless or improper acts of said defendant, and deny that any loss was sustained by Boise City settling with the said sureties on the city clerk's bonds and deny that said settlement was for less than the amount for which the sureties were liable on said bonds.

In this connection defendants allege that subsequent to September 30, 1933, the defendant Boise City made and caused to be made a full, true and correct account of all of the books, records and accounts of all improvement districts in said Boise City, including Local Sidewalk and Curb improvement District No. 38 from the time of its creation to September 27, 1933, which audit and account fully and completely discloses all of the information desired by the accounting sought by plaintiffs in Paragraph X of said bill of complaint; that said audit and account cost the defendant Boise City in excess of \$30,000.00 and was prepared and certified by competent and experienced public accountants as being true and correct; that said account and audit is now and at all time since completion thereof and long prior to the commencement of this action has been open and available for use by plaintiffs or their agents, servants or attorneys, and that all of the books, records and accounts in connection with Local Sidewalk and

Curb Improvement District No. 38 in possession and custody of the defendants are now open and available for inspection by plaintiffs, their agents, servants or attorneys; that under the circumstances aforesaid it would be inequitable and unconscionable to require the defendant Boise City to make a second, further and additional account, audit or report to these plaintiffs.

## VI.

Answering Paragraph XI of said bill of complaint, defendants deny each and every allegation therein contained.

WHEREFORE said defendant having fully answered said plaintiffs' bill of complaint as amended pray that said bill of complaint be dismissed, that the plaintiffs take nothing, and that said defendants may have the costs expended herein.

**THORNTON D. WYMAN**

**MAURICE H. GREENE**

**Z. REED MILLAR**

Attorneys for defendants

(Service Accepted)



(Title of Court and Cause)

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MOTION.

Filed Sept. 10, 1937

COME NOW The plaintiffs and move the court for an order requiring the defendant Boise City, within a reasonable time to be fixed by the court, to make a full and true account of its acts as statutory trustee for the bondholders of Local Sidewalk & Curb Improvement District No. 38, showing among other things:

- (a) The assessments levied for said fund,
- (b) The collections made,
- (c) The amount paid out for principal and interest, respectively, out of said fund to the holders of bonds secured by such assessments,
- (d) The amount of the assessments, penalties and interest cancelled or rebated,
- (e) The amount certified, if any, from time to time to the officers of Ada County for collection,
- (f) The amount received from said Ada County on account of the assessments so certified,
- (g) The amount of the assessments, principal, interest and penalties collected by the City Clerk of Boise and embezzled, or otherwise wrongfully appropriated,
- (h) The allocation or distribution of the \$14,500.00 collected by said Boise City from the sureties on the

bonds of the City Clerk and the amount thereof which it proposes to allocate to the fund set aside for the payment of the bonds held by plaintiffs and interest thereon.

Richards & Haga  
Solicitors for Plaintiffs  
Residence: Boise, Idaho

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(Title of Court and Cause.)

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ORDER

Filed Oct. 2, 1937

Plaintiffs' motion for an order requiring the defendant above named, Boise City, a municipal corporation, to make a full and true account of its acts as statutory trustee for the bondholders of Local Sidewalk and Curb Improvement District No. 38, showing, among other things;

- (a) The assessments levied for said fund,
- (b) The collections made,
- (c) The amount paid out for principal and interest, respectively, out of said fund to the holders of bonds secured by such assessments,
- (d) The amount of the assessments, penalties and interest cancelled or rebated,
- (e) The amount certified, if any, from time to time to the officers of Ada County for collection,

(f) The amount received from said Ada County on account of the assessments so certified,

(g) The amount of the assessments, principal, interest and penalties collected by the City Clerk of Boise and embezzled, or otherwise wrongfully appropriated,

(h) The allocation or distribution of the \$14,500.00 collected by said Boise City from the sureties on the bonds of the City Clerk and the amount thereof which it proposes to allocate to the fund set aside for the payment of the bonds held by plaintiffs and interest thereon,

and the court having heard argument of counsel and being fully advised in the premises,

IT IS HEREBY ORDERED, That said motion be and hereby is granted, and said defendant Boise City, a municipal corporation, be and hereby is ordered to make and render a full and true account of its acts as statutory trustee for the bondholders of Local Sidewalk and Curb Improvement District No. 38 showing, among other things, the matters said forth in said motion above mentioned and that said Boise City serve such full and true account upon the plaintiffs herein, and file such account herein on or before November 15, 1937.

Dated this 1st day of October, 1937.

CHARLES C. CAVANAH

District Judge

(Title of Court and Cause)

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MOTION

Filed Dec. 4, 1937

COME NOW The above named plaintiffs and move the court as follows:

(a) For an order requiring the defendants to furnish a further, fuller, better and more complete account by showing a statement or list, with a description sufficient for identification, of all lots and tracts, the owners of which have not paid the full amount of the benefit assessed against the same, with interest and penalties, and the amount of such benefits, interest and penalties that are still due and unpaid on each of such lots and tracts.

(b) For an order requiring the defendants to state definitely the amount they admit has been embezzled by the former City Clerk, Angela Hopper, instead of simply reporting what the audit report of Lybrand, Ross Bros. & Montgomery shows.

(c) For an order requiring the defendants to state definitely whether the items of \$800.11 and \$353.16 referred to in paragraph (g) of defendants' "Report and Account" verified on November 3, 1937, are admitted by defendants as having been collected and received by Boise City, and what defendants' position is or will be with reference to said items having been paid by the lot owners and what disposition has been made

of said sums by that city.

(d) For an order requiring the defendants to make such further accounting as may be necessary to determine the correct status of the trust account.

This motion will be based upon the records and files in the cause, including the report filed on or about November 23, 1937 by said defendants.

**RICHARDS & HAGA**

Attorneys for Plaintiffs

Residing at Boise, Idaho

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(Title of Court and Cause)

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**OBJECTION TO REPORT AND  
REQUEST FOR FURTHER  
PARTICULARS**

Filed March 9, 1938

**TO THE ABOVE NAMED DEFENDANTS  
AND TO MESSRS. THORNTON D. WYMAN  
AND Z. REED MILLAR, Their attorneys of record:**

**YOU WILL PLEASE TAKE NOTICE** That plaintiffs object to the supplemental report filed herein by the defendants for the reason that the same is incomplete in a number of particulars, and does not contain the information required to be contained in such report under the order of the court relative thereto.

Plaintiffs particularly demand a supplemental report showing:

1. The amount of interest paid annually on the bonds issued by Boise City for Local Sidewalk and Curb Improvement District No. 38.

2. The amount paid on the principal of such bonds during each and every year.

3. The amount of the tax or assessments levied for the payment of principal and interest during each and every year.

4. The amount collected annually by the city under such tax or assessments.

5. The amount of the tax and penalty certified to the county for collection annually.

In the first report filed, totals for the entire period are given. It is necessary that these totals be broken down so that we may allocate to each year the proportionate part of the total belonging to such year.

In paragraph (e) of the first report, the year should be stated when each certification was made.

There should also be shown the tax sales or conveyances to Ada County prior to the year 1928, and subsequent to the year 1931.

Dated this 5th day of March, 1938.

OLIVER O. HAGA  
RICHARDS & HAGA  
Attorneys for Plaintiffs

(Service Accepted)



(Title of Court and Cause.)

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**PLAINTIFFS' OBJECTIONS TO REPORTS  
AND ACCOUNTS FILED BY DEFEND-  
ANTS, AND REQUEST FOR FUR-  
THER PARTICULARS.**

Filed March 9, 1938

**TO THE ABOVE NAMED DEFENDANTS  
AND TO MESSRS. THORNTON D. WYMAN  
and Z. REED MILLAR, Their attorneys of record:**

**YOU WILL PLEASE TAKE NOTICE  
THAT PLAINTIFFS** object to the second sup-  
plemental report filed herein in behalf of defendants,  
for the reason that the same is incomplete in a num-  
ber of particulars, and does not contain the informa-  
tion required to be contained in such report under the  
order of the court relative thereto, and plaintiffs par-  
ticularly demand that said report and the other re-  
ports filed by defendants be supplemented by the re-  
port of Lybrand, Ross Bros. & Montgomery, certified  
public accountants, who, at the expense of the defend-  
ant, Boise City, audited the books and records of the  
city for the 10 year period commencing October 1,  
1923 and ending September 30, 1933.

Dated this 8th day of March, 1938.

**RICHARDS & HAGA**  
Attorneys for Plaintiffs

(Title of Court and Cause)

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OPINION

Filed April 9, 1938

Messrs. Richards and Haga, Boise, Idaho  
Attorneys for the Plaintiffs.  
Thornton D. Wyman, Boise, Idaho  
Z. Reed Millar, Boise, Idaho  
Attorneys for the defendant.

APRIL 9, 1938

CAVANAHA, District Judge.

The plaintiff brings the action for an accounting by the city, of its trusteeship for the bondholders of independent District 38, and for judgment in the amount found due.

On February 27, 1937 motions to strike and dismiss were presented to the Court and it was there held that under the Statute of the State Governing the issuance and collection of special assessments by the municipality to be applied in the payment of the bonds, that: "The bondholders have two remedies for the collection of their principal and interest, first; in case the city shall neglect to levy the assessment and pursue the usual and ordinary methods provided by the statute for the collection of the same, the holders of the bonds may compel it to do so by mandate, and if it fails and neglects to collect the assessments after levy having



been made and the property owners become delinquent in the payment of their installments, the bondholders may foreclose their lien through the Court, and second; the city may be sued and is liable for the amount of the assessment made for the improvement for which bonds were issued after it has by its officers collected the same, for the statute seems clear that the city is liable "for collection of the special assessments made." The facts alleged do not bring the case under the first remedy, for complaint is not made of failure of the City to act in levying the assessment and thereafter collecting the same, but it is brought under the second remedy to conserve and apply the assessment already collected by the City through its officers to the payment of the bonds as it alleges that the assessments were made and collected by the officer of the city and by her misappropriated." The liability of the city was held by the Supreme Court of the State, when in considering proceedings under the statute in local paving district 26, where the money collected by the city clerk, of the special assessment, had been *embezzled* by the City Clerk in the case of *Cruzen v. Boise City* 74 Pac (2) 1037, and in which the Court cited with approval the opinion of this Court in the present case. *Smith v. Boise City Idaho*, 18 Fed. Supp. 385. The inquiry then is, does the evidence sustain both the first and second remedies and the unlawful diversion of the special assessments after their receipt by the City, and if the plaintiffs are the owners of the bonds sued upon and in the amount, if any, is due them? It may be

further stated that should it appear that the city failed as statutory trustee for the bondholders, to perform its duty as such trustee in levying a sufficient amount to pay the principal and interest of the bonds or by its officers in misappropriating or unlawfully diverting, after receipt of the same, or that the money was collected from the special assessment and paid out contrary to the provisions of the statute, it becomes liable for such loss to the bondholders. It is relieved from legal liability if it observes the provisions of the Statute in that respect. That is the conclusion reached in the opinion in the present case, *Smith v. Boise City et al*, 18 Fed. Supp. 385. *Bosworth v. Anderson* 47 Idaho, 697, 280 Pac 227. *Richardson v. City of Casper* 45 Pac (2) 1. We must not become confused as to the extent of the City's liability from the authorities cited by the plaintiffs for the City's failure to pursue the usual and ordinary methods provided by the statute for the collection of the assessments, as they only apply after the City, through its officers, has collected the assessment and failed to account for or has unlawfully diverted the same, or neglected to comply with the statute in providing the necessary fund. It has to conserve and apply the amount already collected. Section 49-2728 I C A. Otherwise the city is not liable under the special statute which governs and defines its liability as such trustee, as the holders of the bonds must pursue the remedy provided by the statute by either mandamus to compel the City to act, or foreclose their special lien against the property assessed. Section 49-

2725. The New First National Bank of Columbus, Ohio, v. City of Weiser, 30 Idaho 15, 166 Pac. 213. No liability of the city under the circumstances is recited in the bonds. The trusteeship of the city being one limited by the statute and requires a performance of such statute, it is evident that the general rules regarding trustees do not apply for a statutory trust is not what is termed a "normal trust." 2 Bogart on Trusts Section 245.

We then turn to the evidence to ascertain, first; if the plaintiff is the owner and holder of the bonds in question and whether the City comes under the principle stated. The bonds involved are made payable to "bearer" and the plaintiff being the holder thereof and offers them in evidence without objection would seem to establish their ownership and right to maintain the action.

Under the order of the Court the City has filed three "reports and accounts", the first two of which are based principally upon information obtained from an audit of Lybrant, Ross Bros. and Montgomery, certified public accountants, which the plaintiffs assert are in many instances evasive, conflicting and inconsistent.

Referring to the order of the Court made on October 1, 1937, requiring the defendant to render and file a true account of its acts as statutory trustee for the boldholders, it is there provided that the following information be furnished to the plaintiff: "(a) The assessments levied for said fund, (b) The collections

made, (c) The amount paid out for principal and interest respectively, out of said fund to the holders of bonds secured by such assessments, (d) The amount of the assessments, penalties and interest cancelled or rebated, (e) The amount certified, if any, from time to time to the officers of Ada County for collection, (f) The amount received from said Ada County on account of the assessments so certified, (g) The amount of the assessments, principal, interest and penalties collected by the City Clerk of Boise and embezzled, or otherwise wrongfully appropriated, (h) The allocation or distribution of the \$14,500.00 collected by said Boise City from the sureties on the bonds of the City Clerk and the amount thereof which it proposes to allocate to the fund set aside for the payment of the bonds held by plaintiffs and interest thereof.”

Pursuant to the order the City made its report and account on November 24, 1937, showing:

(a) Assessments levied	\$56,493.62
Interest levied	21,750.25
	<hr/>
	78,243.87
(b) Collections made;	
City Clerk	31,060.27
From Ada County	23,816.24
	<hr/>
	54,876.51
(c) Amount paid out for principal and interest;	
As principal	19,539.10

As interest	31,932.88
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51,571.98

- (d) That the records show no rebate or cancellations of assessments, penalties or interest.
- (e) Amount certified to Ada County, This shows 10 installment certifications although the date isn't attached, it is later shown by the second supplemental account to have begun in 1922 and totals 49,470.93
- (f) Amount received from Ada County from each such certification, totals 21,672.40  
 With subsequent items paid each year to 1937 making a grand total from Ada County of 23,816.24
- (g) Refers to the only information available charged to the Angela Hopper embezzlement, the sum of 2,242.92  
 and two other items showed as  
 (1) unpaid and overdue and not certified to Ada County  
 and  
 (2) marked paid on rolls in excess of amount of duplicate receipts
- (h) That the \$14,500.00 were being held in a special suspension fund to be kept and maintained for judicial determina-

tion of the owners thereof.

A summary of the account presents the following:

**TOTAL AMOUNT OF BONDS ISSUED**  
 Bonds were issued January 1, 1922 which  
 matured January 1, 1932, principal sum of \$56,539.10

**TOTAL ASSESSMENT AND LEVY FOR  
 PRINCIPAL AND INTEREST MADE  
 BY THE CITY**

Amounts levied for principal	56,493.62
Levied for interest	21,750.25
	<hr/>
Total	78,243.87

**AMOUNTS COLLECTED AND ITEMS  
 CHARGEABLE TO THE CITY**

Collected by the City Clerk	31,060.27
Remitted to the City by Ada County	23,816.21
	<hr/>
Total	54,876.48

Balance that should be in City Treasury  
 being the difference between the amount  
 paid in and amount paid out. 3,404.53

Amount appearing as unaccounted for by  
 the City Clerk 2,242.92

Amount unpaid but not certified to the  
 County by the City 800.11

Amount appear paid on tax rolls of the  
 city but no receipts found 353.16

Amount appearing as the difference in the



amount levied for amount levied for principal of bonds and the amount of bonds, as the amount levied was \$56,493.62 and the total principal issue of the bonds was \$56,539.10

45.48

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 61,722.68

### AMOUNTS ACCOUNTED FOR BY CITY

Amount paid by City Treasurer on Principal of bonds	19,539.10
Amount paid by City Treasurer on interest on bonds	31,932.88
Cash in City Treasury	3,404.53
	<hr/>
	54,876.51

As appears from the above statement of the account it seems that the difference between the total chargeable items and those to be applied on the bonds is \$6,846.17 which is to be pro-rated among the total unpaid bonds of the district. The remaining unpaid bonds in the District is \$37,000.00 principal.

The other items which the plaintiffs urged should be chargeable against the City, and disallowed are:

(a) Penalty on the item of \$800.11 and penalties not certified to the County of \$2,698.87, it seems that they do not accrue until the property had become delinquent. The laws of the state require the City to certify to the County delinquent taxes and special assessments and when that is done the penalties attach

and are collected by the County and not by the City. Section 49-1711 and 49-2715 I C A. Thus the City is not liable for failure to certify penalties.

(b) As to the item relating to the claim of \$10,034.14, as interest which it is urged should be charged against the City for failure to levy for, it appears that the City paid out as interest on the bonds the sum of \$31,932.88, and levied \$21,750.25 for interest, the contention being made that the City did not provide by levy the difference between those amounts. It is sufficient to say that Section 49-2723 I C A provides that the funds arising from the assessments shall be applied towards the redemption of the bonds, and the City treasurer shall pay the interest on the bonds out of the local improvement funds. The Supreme Court of the State in the case of *Bosworth v. Anderson* 47 Idaho 697, 280 Pac 227, refused to hold a city liable for applying the fund on interest, see *Moore v. Nampa* (CCA9th) 18 Fed. (2) 860. That was done here, the \$10,034.14 was paid as interest out of the fund. "The bondholders look primarily to the local improvement district fund for the payment; first, of all interest due, then of the matured bonds themselves in numerical order, as far as the money collected will go." *New First National Bank of Columbus, Ohio v. Linderman* 33 Idaho 704, 198 Pac 159.

(c) As to the item of \$6,513.04 which it is urged should be chargeable against the city on account of it paying bonds 1 to 39 inclusive in the numerical order

instead of pro-rata. It seems that the bonds did not mature until January 1, 1932 and those paid were before maturity. The statute giving the manner of payment of the bonds in Section 49-2723 I C A, and it is there provided: "Whenever there shall be sufficient money in any local improvement fund against which bonds have been issued under the provisions of this chapter, over and above the amount sufficient for the payment of interest on all unpaid bonds, to pay the principal of one or more bonds, the Treasurer shall call in and pay such bonds, which shall be called and paid in their numerical order." The statute seems clear as making it the duty of the City treasurer, whenever there shall be sufficient money in the fund over and above the amount sufficient for the payment of interest on all unpaid bonds, to pay the principal of *one* or *more* bonds in their numerical order. There were no objections made when the bonds were paid by any bondholder or other person as to the payment in numerical order and the entire issue had not matured, in fact none of the bonds had matured but the City had the right as provided in the bonds to redeem them on or before maturity. The mere fact that during some of the time there were due on some of the property taxes did not exhaust the security, because under the state revenue laws the remaining security would not become exhausted for a number of years. In the case of *Myers v. City of Idaho Falls* 52 Idaho 81, 11 Pac (2) 626, the Court, when in referring to the case of *New First National Bank of Columbus, Ohio, v.*

Linderman, *supra*, said; "The bonds were not yet due and the remaining security had not been exhausted, these facts marking the difference between that case and the case we are considering." When the bonds were redeemed it stopped the accumulation of interest.

It remains to be considered that there is, to the bondholders, \$25,630.33 caused by delinquencies of certain of the properties in the District which was certified to the County by the City for failure to pay the general taxes which should be held as a payment to all the unpaid bondholders if not lost under the laws of the State for payment of the taxes, subject to their foreclosure or other action, but not against the City.

The amount found owing to the unpaid bondholders from the City should be distributed among them in the proportion which each unpaid bondholder's interest bears to all the outstanding unpaid bonds.

Plaintiff should have judgment in accordance with the views here expressed.

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(Title of Court and Cause)

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FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Filed April 23, 1938

THIS CAUSE came on to be heard at this term, and was submitted upon the written argument of coun-

sel; and thereupon, upon consideration thereof, the court finds, concludes and decides as follows, viz.:

## FINDINGS OF FACT

### I

The following facts alleged in plaintiffs' complaint were admitted by the answer of defendants:

(a) That the plaintiffs E. H. Smith, Alice M. Bethel and Ethel W. Johnston, are citizens of the State of Colorado, residing in the city of Denver, said State; that D. N. McBrier and F. B. McBrier are citizens of the State of Pennsylvania, residing in the city of Erie, said State; that Charles A. Owen and Morris K. Rodman are citizens of the State of Michigan, residing in the city of Detroit, said State.

(b) That Boise City is a municipal corporation organized and existing under the laws of the State of Idaho, and that Thomas F. Rodgers is Treasurer of said City.

(c) That the matter in controversy in this suit, exclusive of interest and costs, exceeds the sum of \$3,000.00;

(d) That about the month of April, 1920, Boise City created by ordinance, duly passed by the Council and approved by the Mayor, Local Sidewalk and Curb Improvement District No. 38 of said City, under what is now Chapter 27 of Title 49 (secs. 49-2701 to 49-2730), Idaho Code Annotated, 1932, and said Boise City caused to be issued and sold bonds under said

Chapter 27 in the principal sum of \$56,539.10, bearing date the first day of January, 1922, payable to bearer, and bearing interest at the rate of 7% per annum, payable semi-annually on the first day of January and the first day of July of each year commencing July 1, 1922; that all of said bonds were made payable on or before the first day of January, 1932, at the office of the City Treasurer of said Boise City or at the Chase National Bank in the City of New York.

(e) That said issue of bonds there remains unpaid and outstanding bonds of the principal amount of \$37,000, and interest thereon from January 1, 1932.

(f) That the holders of said bonds duly presented the same for payment to the City Treasurer of said Boise City after the first day of January, 1932, but he declined and refused to pay the same for the reason that he held in the fund available for the payment of such bonds only the sum of \$2,817.57.

(g) That a former city clerk who had held the position of Clerk of said Boise City for upwards of ten years immediately prior to the first day of September, 1933, failed to account for a large sum of money belonging to Boise City, which includes \$2,242.92 of the funds of said Local Sidewalk and Curb Improvement District No. 38, collected for the purpose of paying said bonds.

## II.

That the defendant City failing to exercise ordinary



care and prudence in causing to be kept accurate records resulted in the City Clerk keeping inaccurate and false records of the funds belonging to said District No. 38, and the amount here found to be unaccounted for was wrongfully diverted and misappropriated by the City Clerk, and the negligent, careless and inefficient manner in which the books and records of the City were kept resulted in losses to said fund that should have been applied on the payment of said bonds as appears from the following tabulated statement:

Total amount of bonds issued	\$56,539.10	
Total amount levied for payment of principal	56,493.62	
	<hr/>	
Deficit in amount levied for pay- ment of principal		\$ 45.48
Amount remitted by City Clerk to City Treasurer	\$31,060.27	
Amount remitted by County Treasurer to City Treasurer	23,816.21	
	<hr/>	
<b>TOTAL RECEIVED BY CITY TREASURER</b>	<b>\$54,876.48</b>	
Amount paid by City Treasurer on principal of bonds	\$19,539.10	
Amount paid by City Treasurer on interest on bonds	31,932.88	
	<hr/>	
<b>TOTAL PAID OUT BY CITY TREASURER</b>	<b>\$51,471.98</b>	

Difference between amount received by City Treasurer and amount paid out	3,404.50
Amount unaccounted for by City Clerk	2,242.92
Assessments shown on books of City Clerk as unpaid but not certified to county	800.11
Amount marked paid on assessment rolls but no receipts found and money not ac- counted for	353.16
<b>TOTAL</b>	<b>\$6,846.17</b>

### III

That the following table shows the amount levied by said Boise City for principal and interest during the years 1922 to 1931, inclusive, and the amount of assessments that became delinquent because of default of the lot owners in making payment, according to the books of the city clerk, and the amount of delinquent taxes certified to Ada County for collection under the statute during each of such years:

Year	Principal	Interest	Delinquent	Certified to County
1922	\$5649.36	\$3954.55	\$5590.20	\$6042.13
1923	5649.36	3559.10	4505.10	5366.10
1924	5649.36	3163.65	5036.79	5575.32
1925	5649.36	2768.20	4612.69	5021.75
1926	5649.36	2372.75	3859.36	4784.96
1927	5649.36	1977.30	4801.88	4522.81
1928	5649.36	1581.85	4694.54	4742.25

1929	5649.36	1186.40	4618.34	4646.85
1930	5649.36	790.95	5152.01	4856.11
1931	5649.38	395.50	4312.69	3912.65

## IV

That bonds numbered 1 to 39, inclusive, of the principal amount of \$19,539.10, were redeemed before maturity, and interest coupons to the amount of \$31,784.11 were paid, and also an additional sum of \$148.77 was paid for interest; that said bonds were redeemed on the dates and in the amounts following, to-wit:

Numbers of Bonds	Date of Redemption	Amount Redeemed
1 to 4, inclusive	July 25, 1923	\$2,039.10
5 and 6	Jan. 2, 1924	1,000.00
7 to 9, inclusive	July 19, 1924	1,500.00
10 and 11	Jan. 2, 1925	1,000.00
12 to 18, inclusive	July 20, 1925	3,500.00
19 to 24, inclusive	July 19, 1926	3,000.00
25 to 28, inclusive	June 20, 1927	2,000.00
29 and 30	Sept. 12, 1927	1,000.00
31 to 33, inclusive	July 11, 1929	1,500.00
34 to 37, inclusive	Mar. 6, 1930	2,000.00
38 and 39	Jan. 28, 1931	1,000.00

That the failure of the city to redeem one-tenth of the bonds during each year, commencing with the year 1922, was due largely to the failure of many of the lot owners to pay their assessments as the same became due, or at all; that the principal amounts of ac-

cumulated delinquent assessments certified by the city to Ada County for collection, remaining unpaid, exclusive of interest, for the years 1922 to 1931, were as follows:

Year	Amount
1922	4,364.48
1923	7,586.17
1924	10,185.30
1925	12,799.83
1926	14,658.76
1927	17,384.32
1928	20,042.57
1929	22,708.18
1930	25,213.88
1931	27,798.53

## V.

That the condition of the trust fund which Boise City was to create, collect and apply to the payment of the bonds held by plaintiffs and others similarly situated, could not be ascertained without full, true and correct accounting being rendered by the defendants; that Boise City made a settlement with the sureties on the general bond of the city clerk in office, from the time the said bonds were issued until about September 1, 1933, and received in settlement from the sureties on the general bonds of said city clerk the sum of \$14,500.00, which amount is still held by the treasurer of Boise City and is not allocated to any fund in that office.

## VI.

That plaintiffs are the holders and owners of the following bonds, issued for improvements in said local sidewalk and curb improvement district No. 38:

E. H. Smith	Bonds Nos. 44, 45, 54, 55—4 bonds	\$2,000.00
D. N. McBrier	Bonds Nos. 40 to 43, and 56 to 65, inclusive— 14 bonds	7,000.00
F. B. McBrier	Bonds Nos. 78 to 87, inclusive—10 bonds	5,000.00
Alice M. Bethel	Bonds Nos. 66 and 67 2 bonds	1,000.00
Charles A. Owen	Bonds Nos. 94 to 113 inclusive—20 bonds	10,000.00
Morris K. Rodman	Bonds Nos. 49, 51, 52 and 53—4 bonds	2,000.00
Ethel W. Johnston	Bond No. 50—1 bond	500.00
	Total	27,500.00

## VII.

That the holders of the remaining \$9,500.00 of outstanding bonds issued on account of said improvement district have not appeared in this cause; that plaintiffs have employed counsel to conduct this litigation on behalf of all of said bondholders and are entitled to be reimbursed therefor out of the fund recovered by their suit, and for such purpose \$700.00 is fixed as

reasonable fees for counsel in making investigations of the fund, preparing the cause for trial and conducting the litigation to final decree.

### VIII.

That additional monies may hereafter be paid by Ada County to the treasurer of said Boise City on account of the assessments levied by said Boise City for the payment of the bonds issued on account of said Local Sidewalk & Curb Improvement District No. 38.

### CONCLUSIONS OF LAW

As conclusions of law from the foregoing facts, the court concludes and decides:

#### I.

That plaintiffs are entitled to a decree and judgment against the defendant, Boise City, for the sum of \$6,846.17, together with costs of this action, with interest thereon at the rate of 6% per annum from the date of decree; that from the said sum of \$6,846.17, there shall be deducted and paid to counsel for plaintiffs by said Boise City the said sum of \$700.00.

#### II.

That the balance of said \$6,846.17, to-wit: \$6,146.17 shall be prorated over the outstanding bonds, to-wit: \$37,000.00 and all bondholders shall be paid their respective prorata parts of said amount.

#### III.

That any additional monies hereafter collected or



received by said Boise City or the treasurer thereof for the fund created for the payment of bonds issued on account of said Local Sidewalk & Curb Improvement District No. 38, shall be prorated between the bondholders according to the amount of bonds held by each; that if any bonds be not presented within a reasonable time from the entry of the decree, plaintiffs may apply to this court for a further order in the premises.

Let decree be entered accordingly.

CHARLES C. CAVANAH,  
District Judge

Dated April 23rd, 1938.

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(Title of Court and Cause)

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DECREE

Filed April 23, 1938

**THIS CAUSE** came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, **IT WAS ORDERED, ADJUDGED AND DECREED** as follows, viz.:

1. That plaintiffs, for themselves and all others similarly situated who are holders of bonds issued for improvements made in Local Sidewalk and Curb Improvement District No. 38 of said Boise City, have judgment against said defendant Boise City for the

sum of \$6846.17, together with costs of this action, with interest on said amounts at the rate of six per cent. (6%) per annum from the date hereof.

2. That payment thereof shall be made in the manner following, to-wit:

(a) There shall be paid to Messrs. Richards & Haga, counsel for plaintiffs herein, the sum of \$700.00, as fees for their services as plaintiffs' counsel in this cause, and said amount, with interest thereon until payment is made, shall be deducted from the said sum of \$6846.17 and interest thereon;

(b) That the balance of said \$6846.17, with interest thereon, after deducting the fees of counsel as aforesaid, shall be paid pro rata to the holders of the outstanding bonds, to-wit, \$37,000, as their interest may appear; that for the purpose of said pro rata payment the plaintiffs who appeared in the cause are owners of said bonds in the amounts following, to-wit:

E. H. Smith	\$2,000.00
D. N. McBrier	7,000.00
F. B. McBrier	5,000.00
Alice M. Bethel	1,000.00
Charles A. Owen	10,000.00
Morris K. Rodman	2,000.00
Ethel W. Johnston	500.00

That payment to other holders of bonds shall be made only as the bonds are surrendered at time of payment.

3. That any additional moneys hereafter received by Boise City, or the Treasurer of said City for the

account of the fund created for the payment of said bonds, shall be prorated and paid to said bondholders on the basis hereinbefore set forth.

4. That if any bonds be not presented within a reasonable time from the entry of this decree, plaintiffs may apply to this court for a further order and directions as to the payment of any moneys in the fund created for the payment of said bonds, and jurisdiction over the cause and the parties is hereby retained for such purpose.

5. That the defendant Boise City shall pay to Messrs. Richards & Haga, counsel for plaintiffs, but not out of the fund created for the payment of said bonds as aforesaid, the costs incurred by plaintiffs herein, taxed at \$34.00.

DONE in open court this 23rd day of April, 1938.

CHARLES C. CAVANAH

District Judge

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(Title of Court and Cause)

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STATEMENT OF THE EVIDENCE  
ON APPEAL

Lodged August 5, 1938

Filed Aug. 30, 1938.

THIS CAUSE Came on for trial before the Honorable Charles C. Cavanah, District Judge, on the 9th

day of March, 1938, at ten o'clock A. M.,; Oliver O. Haga of the firm of Richards & Haga appeared for the plaintiffs, and Thornton D. Wyman and Z. Reed Millar appeared as attorneys for the defendants, whereupon the following proceedings were had:

Counsel for plaintiffs reviewed briefly the motions that had been filed for an accounting and the orders that had been made by the court requiring that an accounting be made by the defendants, and the substance of the reports that had been filed by the defendants pursuant to such orders.

Plaintiffs thereupon offered in evidence bonds held by the plaintiffs, respectively as follows:

Exhibit No. 1: Bonds held by plaintiff E. H. Smith, aggregating \$2,000 par value,

Exhibit No. 2: Bonds held by plaintiff D. N. McBrier, aggregating \$7,000 par value,

Exhibit No. 3: Bonds held by the plaintiff Frank B. McBrier, aggregating \$5,000 par value,

Exhibit No. 4: Bonds held by the plaintiff Alice M. Bethel, aggregating \$1,000 par value,

Exhibit No. 5: Bonds held by the plaintiff Charles A. Owen, aggregating \$10,000 par value,

Exhibit No. 6: Bonds held by the plaintiff Morris K. Rodman, aggregating \$2,000 par value,

Exhibit No. 7: Bond held by the plaintiff Ethel W. Johnston, aggregating \$500 par value,

Making a total of \$27,500 of bonds held by plaintiffs, with interest due from January 1,

1932, at the rate of 7% per annum, no part of which, either principal or interest, has been paid.

Whereupon, counsel for plaintiffs stated:

“I assume that the reports which the defendant has filed are before your Honor as a part of the record in the case. Naturally, we do not vouch for these reports.

\* \* \* \* \*

“The reports, as I have stated, set forth that they are based upon the audit made by Lybrand, Ross Brothers & Montgomery, and are taken from data contained in that audit. I submit that that audit should be made available for examination in court, so that we may check the data upon which these reports purport to be based.”

Counsel for plaintiffs thereupon offered the audit report of Lybrand, Ross Brothers & Montgomery, and the same was admitted for the purpose of showing the connection and pertinency of certain excerpts from such report, which counsel stated he proposed to offer in evidence, and which he said were particularly pertinent to the issues in the case. The audit was received for that purpose.

Whereupon, counsel for plaintiffs offered the following excerpts from the said audit of Lybrand, Ross Brothers & Montgomery:

Excerpt from page 21 of audit:

“All special assessment records were examined in detail for the entire period of our audit, but in

accordance with arrangements agreed upon with you, we did not confirm all balances due. We did, however, request confirmation of about 30 pct. of the amount of assessments which our audit indicated were paid but for which the cash had not been accounted for. In addition, various other confirmations were requested in connection with our verification of other receipts and expenditures, to the extent found practicable under the circumstances of the relative importance of amounts involved or of the availability of addresses of the individuals, firms, and companies from whom confirmations were desired."

Excerpt from page 26 of audit:

"Due to the lack of records and the laxities in the administrative supervision of the handling of the city's funds, we were unable to completely ascertain the extent of all losses sustained by the city, and especially the extent to which unauthorized or fraudulent expenditures may have been made, or the extent to which various departmental and miscellaneous revenues may have been withheld from deposit with the city treasurer."

Excerpt from pages 30-31 of audit:

*Condition of Records:* In previous divisions of this report we have discussed the general condition of the records and the volume of transactions relating to or affecting the time required for our audit.



“The extent to which records were missing, and the chaotic conditions resulting from the continued and ever-present inefficiencies, irregularities, falsifications, and indifferent workmanship that permeated the records throughout the entire period of our audit, are beyond all possibility of a comprehensive statement thereof in brief form, for the purpose of this resume, that would fairly and adequately acquaint you with such conditions.

“Therefore, we direct your attention to the detailed comments throughout this report, where we have necessarily referred to the conditions encountered by us in order to adequately explain the extent and results of our work. In addition, your attention is especially directed to the comments on ‘Accounting Methods and Personnel,’ wherein we present our detailed recommendations for the correction of these conditions.

“In general, our findings with respect to the unsatisfactory condition of the records are that (a) too little thought has been given to the matter of competence and technical bookkeeping and clerical ability on the part of employees engaged for bookkeeping and clerical duties, (b) the city clerk failed to exercise supervision of the accounting records and procedure such as was required of her as city auditor, and (c) the annual audits failed to bring the unsatisfactory conditions to the attention of the council so that steps for the correction thereof could be taken.”

Excerpt from page 38 of audit:

*“Special Assessment Funds:* While the ordinances establishing improvement district funds specified the amount of the assessments to be levied, errors of large amounts were made in recording such assessments in the fund accounts. For instance, the total assessments for sidewalk and curb improvement district No. 38 was entered for approximately \$21,500 less than the actual amount of the assessments, and none of the weed assessments, except for 1930, were recorded. Such errors may have been made intentionally since they provided a means for reducing the amounts for which the city clerk would be accountable, thus permitting collections on the unrecorded amount of assessments to be applied to offset collections on other assessment funds that had been withheld by the city clerk.”

Excerpt from pages 202-203 of audit:

“In recording the improvement district rolls, interest was added to each assessment, as provided by law, although numerous errors were made in the computations. We noted that all of such interest has been recorded as surplus of the respective improvement district funds, notwithstanding the fact that a portion of such interest had not been collected or earned.

“We noted many instances where assessments were paid in full in advance of the installment

dates and the unmatured interest thereon was cancelled. In recording such collections, no record of the cancellation of the interest was made. Thus, the accounts of the improvement district funds indicated amounts due which had been settled in full.

\* \* \* \* \*

“In many instances, we noted that penalties were not collected, even though due and chargeable, and instances were noted of delinquent payments on the same roll and on the same dates where penalties were collected in some cases and not collected in others, there being apparently no uniformity of fixed dates after which penalties were chargeable.

“Numerous errors were found in the city’s records of penalties and interest added for delinquencies, and in many instances no records of such amounts were made on the city’s books. In this report, we have provided for the adjustment of all penalty and interest accruals on delinquent assessments, although we necessarily had to rely in many instances upon the information furnished to us by the county, since the city had no records of such accruals.”

Excerpt from page 204 of audit:

“In many instances taxpayers have redeemed their properties by paying the city and county taxes thereon and also the delinquent special as-

assessments. In such cases, the county's records indicated the redemption of such property and the city was advised by periodical reports from the county treasurer's office. When property is taken over by the county and later sold for taxes, it often happens that the amount realized is not sufficient to pay all delinquent taxes and assessments. In such cases, the special assessment funds suffer a loss but we noted that in many instances such losses had not been recorded on the city's books. For the purpose of this report, we have given effect to all such losses reported to us."

Excerpt from page 207 of audit:

" \* \* The individual assessments were in numerous instances recorded on the rolls, either originally or as later revised, in a careless manner and with a lack of uniformity of method, being either typewritten, in ink, or in pencil. The rolls contained numerous alterations and many items had been ruled out, making it difficult, and in some instances impossible, to determine therefrom the correct figures for the purposes of verifying the amount of assessments to be accrued.

"In connection with the assessment rolls of improvement districts, no record was made of the rate of interest to be added incidental to the bonding of the assessments. Therefore, we could determine the rates only by making tests of the computations of the bonded rolls, and in some in-

stances we found that slightly different rates of interest had been applied to individual assessments of a specific roll. Inaccuracies were found in the calculation of the yearly installments of the bonded rolls. Individual assessments were found to have been left open on the current rolls beyond the dates assumed for delinquency, and in some instances these apparently open and uncollected assessments had been transferred to delinquent rolls while in other instances they had not been so transferred.”

Excerpt from pages 208-209 of audit:

“ \* \* Approximately 34,000 receipts were issued for collections of special assessments during the period of our audit. The duplicates of these receipts were, in general, in a deplorable condition for the purposes of our examination, due to the numerous falsifications that had been made in the alteration of the amounts, names, and descriptions which comprised the details of the receipts. Not only were there numerous instances of such alterations, but upon many duplicate receipts the details had been so entirely erased for the apparent purposes of concealing irregularities in connection with collections, that such details could not be identified at all with any given assessment found upon the rolls. In many instances the details of a duplicate receipt were entirely erased and the receipt had been used as a duplicate purporting

to represent an entirely different collection.

“Errors and irregularities occurred in the entering of collections in the cash book of the city clerk’s office for amounts differing from the amounts as shown by the duplicate receipts, and additionally, errors of distribution to funds in respect of collections entered in the cash book increased the difficulty of reconciliation between the status of special assessments as shown by the rolls with that as shown by the fund accounts.

“Upon certification of delinquent taxes to Ada County for collection, the amounts certified for specific rolls were found almost without exception to be at variance with the amount of open items remaining uncollected as shown by the current rolls of the respective districts. The reconciliations of these variations were rendered difficult by the lack of explanations in the records and by the evidence of falsifications in connection with the entries.

“As a part of our auditing procedure, it was found necessary to completely analyze all fund accounts as kept in the office of the city clerk for the entire period covered by our engagement. As a result thereof, we found many instances of collections of current assessments received by the city clerk which had been credited as collections upon delinquent assessments presumed to have been made by Ada County, and vice versa. Also, we



found that numerous collections of special assessments had not been recorded as such on the fund accounts but had been credited to revenues. Furthermore, interest and penalties collected by Ada County had been credited to delinquent assessments but no offsetting accrual therefor had been made, resulting in a lack of reconciliation of the amounts of assessments uncollected as shown by the rolls of delinquent assessments and/or the records of Ada County, with the amounts of such assessments uncollected as shown on the fund accounts.

“As a result in general of the condition of the records, and of the errors, inefficiencies, and falsifications which attended the keeping of the records, as commented upon in foregoing paragraphs, we regret that we can express only the severest criticism of these conditions.”

Excerpt from page 210 of audit:

“Throughout this division of our report we comment further upon other limitations of the records due to their lack of availability or their condition, the inefficient manner in which they were kept, the errors and falsifications, inconsistencies of entries, absence of necessary explanations, unrecorded transactions and other phases of the city’s accounting and in general, explain further the scope of our audit.”

Excerpt from page 213 of audit:

“The amounts of rebates and allowances upon various special assessments, which had been entered upon the current rolls, as well as those which were reported to us by the treasurer of Ada County as having been credited upon the delinquent assessments, were given effect to by us in our adjustments of the fund accounts. These, however, were not susceptible of our verifications in detail, since, with the exception of a few instances, there were no records available to us of the city having issued authority for such rebates and cancellations.”

Excerpt from page 223 (Vol. II) of audit:

“Tabulated statement entitled,

‘SUMMARY OF SPECIAL ASSESSMENTS, Continued.’

*‘Accruals During Period’*

(Oct. 1, 1923-Sept. 30, 1933)

shows the following information relative to Sidewalk and Curb Improvement District No. 38:

Balances Oct. 1, 1933

Per Books	\$ 46,651.52
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Adjustments of Oct. 1, 1923

Balances, Net (Adjustments disclosed by our audit)	17,368.42
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Penalties, Interest, Rebates,

and Adjustments, Net	2,341.64
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Total Amount to Account For	66,361.56
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Collections Accounted for	43,010.14
Uncollected Assessments	
Sep. 30, 1933	19,658.57
Due on Tax Liens	385.33
To be Rebated or Cancelled	
on County Rolls	88.65
Amounts Unaccounted For	3,396.19

Excerpt from page 239 (Vol. II) of audit:

“DETAILS OF SPECIAL ASSESSMENTS TO BE REBATED, OR CANCELLED ON COUNTY ROLLS, Continued.’

Sidewalk and Curb Improvement District No. 38 shows 7 parties and tracts for which rebates were allowed, in the sum of \$88.65.”

Excerpt from page 245 (Vol. II) of audit:

“SUMMARY OF SUSPENSE, AMOUNTS UNACCOUNTED FOR (CLASSIFIED BY FUNDS), Continued’

shows the following data relative to Local Sidewalk & Curb Improvement District No. 38:

Total	\$3,396.19
Special Assessments	3,396.19”

Excerpt from page 246 (Vol. II) of audit:

“SUMMARY OF SPECIAL ASSESSMENTS UNACCOUNTED FOR

‘For the period from October 1, 1923 to September 30, 1933’

shows the following data relative to Local Sidewalk & Curb Improvement District No. 38:

Total Special Assessments	
Unaccounted for, Net	\$3,396.19
Shown as Paid on Rolls; No duplicate Receipts found, and Cash Not Entered on Cash Book	2,242.92
Shown as Paid on Rolls in Excess of Amounts of Duplicate Receipts	353.16
Shown on Rolls as Unpaid and Overdue; Not certified as Delinquent to Ada County	800.11"

Excerpt from page 5 (Vol. III) of audit:

“SUMMARY OF SPECIAL ASSESSMENTS UNACCOUNTED FOR

‘For the period from October 1, 1923 to September 30, 1933’

Local Sidewalk and Curb Improvement District No. 38

Total Special Assessments	
Unaccounted for, Net	\$3,396.19
Shown as Paid on Rolls; No duplicate Receipts Found, and cash not entered on Cash Book	2,242.92
Shown as Paid on Rolls in Excess of Amounts of Duplicate Receipts	353.16
Shown on Rolls as Unpaid and Overdue; Not certified as Delinquent to Ada County	800.11"

Whereupon counsel for defendants offered in evidence the reports which defendants submitted and filed pursuant to the orders of the court directing that an account be furnished. Said reports, insofar as pertinent to the issues involved on appeal, are as follows:

### FIRST REPORT AND ACCOUNT

Filed November 23, 1937

(Title of court and cause omitted):

“Comes now the defendant Boise City and in response to the order of this Court made and entered on the.....day of October, 1937, makes and files this its report and account of Local Sidewalk and Curb Improvement District No. 38, as follows:

a. That the books and records of Boise City show:

Assessments levied (as shown by  
the assessment roll) \$56,493.62

As shown by the ledger account  
in the City Clerk's office 56,539.10

Interest levied (as shown by the  
Assessment roll) 21,750.25

No interest account appears in the ledger account.

b. As shown by the ledger account of Boise City:

Assessments, principal and interest, paid to Angela Hopper and

by her remitted to the City Treasurer are	\$31,060.27
--	-------------

Assessments certified to and col- lected by the County Treasurer of Ada County, including prin- cipal, interest, penalties and de- linquency interest and amounts received by Ada County from tax sales and remitted to the City Treasurer	23,816.24
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c. That the books and records of Boise City show the following:

Amount paid out as principal of bonds	\$19,539.10
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Amount paid out as interest on bonds	31,932.88
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d. That subsequent to the issuance of the bonds and based upon the assessment roll outstanding and unpaid at the time the bonds were issued, the records of Boise City do not show any cancellations or rebates of assessments or penalties or interest thereon within the knowledge of defendant.

e. That the amounts certified to the officers of Ada County for collection are as follows:

1st installment certification	\$6042.13
2nd " " "	5366.10



3rd	“	“	5575.32
4th	“	“	5021.75
5th	“	“	4784.96
6th	“	“	4522.81
7th	“	“	4742.25
8th	“	“	4646.85
9th	“	“	4856.11
10th	“	“	3912.65

## f. Received from Ada County:

1st certification		1677.65
2nd	“	2144.41
3rd	“	2976.19
4th	“	2407.22
5th	“	2926.03
6th	“	1797.25
7th	“	2084.00
8th	“	1981.24
9th	“	2350.41
10th	“	1328.00

## Received subsequent:

1932	953.67
1933	247.68
1934	376.59
1935	340.35
1936	180.66
1937	44.89

---

Total \$23816.24

g. That according to the audit report of

Lybrand, Ross Brothers, and Montgomery, the sum of \$2,242.92 is shown as 'paid on rolls, no duplicate receipts found and cash not entered in cash book' and this amount is charged to the Angela Hopper embezzlement.

That according to the audit report of Lybrand, Ross Brothers, and Montgomery, the amount of \$800.11 is shown as 'Unpaid and overdue, not certified as delinquent to Ada County' and the amount of 353.16 is shown as 'Paid on Rolls in excess of amounts of duplicate receipts.' That the auditors were unable to determine whether the last two amounts were embezzled by Angela Hopper.

h. That the \$14,500.00 received by Boise City from the sureties on the official bonds of the said Angela Hopper was at the time of its receipt placed in a special suspense fund in the office of the City Treasurer of Boise City and the whole of said sum has at all times been kept and maintained in said special suspense fund; and that the whole of said amount will be kept and maintained in said fund until a judicial determination has been had of the ownership of said funds and the allocation thereof to the various funds maintained in the office of the City Treasurer of Boise City.

“That the defendant Boise City has made no determination or proposal of any kind or taken any steps toward proposing to allocate any of said funds to the fund set aside for the payment of the bonds and interest thereon held by plaintiffs and does not know and cannot state to the court whether the plaintiffs are legally entitled to have allocated any portion of such funds to the payment of said bonds and interest thereon.

“Thornton D. Wyman  
Z. Reed Millar  
Maurice H. Greene  
Attorneys for Defendants

“STATE OF IDAHO )  
County of Ada )<sup>ss.</sup>

“M. A. REGAN and THOMAS F. RODGERS, being duly sworn, each for himself, depose and say:

“That they are the City Clerk and City Treasurer of Boise City respectively, and as such officers have in their possession and custody the books and records of Local Improvement District No. 38 of said Boise City; that the foregoing is a true and correct report and account of the matters and things therein set forth or shown by the books and records in the custody of affiants to the best of their

knowledge and belief.

“M. A. Regan

‘Thomas F. Rodgers’”

(Subscribed and sworn to and service acknowledged November 23, 1937.)

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SUPPLEMENTAL REPORT AND  
ACCOUNT

Filed January 14, 1938

(Title of court and cause omitted):

“COMES NOW the defendant, Boise City, and offers this it's supplemental report and account for Local Sidewalk and Curb Improvement District No. 38, and respectfully shows to the court additional matter requested by plaintiffs as shown by the records of Boise City, the audit report of Lybrand, Ross Brothers and Montgomery, and the records of Ada County, as far as the said Boise City has been able to go in obtaining said records.

“Respectfully submitted,  
THORNTON D. WYMAN  
Z. REED MILLAR  
Attorneys for Defendants”

\* \* \*

“On the following four pages is information obtained from the audit of Lybrand, Ross Brothers and Montgomery, Auditors, as to certain as-

assessments and property involved under Special Improvement District No. 38. In that accounting the terms and designations therein used mean and are defined as follows:

**ROLL PAGE** means the page of the original assessment roll upon which the entry appears.

**LOT, BLOCK and ADDITION** refer to the legal description of the property.

**PERIOD ENDED** refers to the end of the period in which that assessment fell due.

**AMOUNT UNACCOUNTED FOR** means the sum of the assessment which is not shown as paid.

“So far as the records of Boise City are concerned the schedule herein presented contains the information with respect to all of the property involved in this improvement district, on which the assessments either have not been paid or have been paid and embezzled by Angela Hopper as the schedule may indicate, respectively.”

**“DETAILS OF ASSESSMENTS SHOWN  
ON ROLLS AS UNPAID AND OVER-  
DUE NOT CERTIFIED AS DE-  
LINQUENT TO ADA COUNTY**

				<i>Amount</i>	
<i>Roll</i>				<i>Period Unaccounted</i>	
<i>Page</i>	<i>Lot</i>	<i>Block</i>	<i>Addition</i>	<i>Ended</i>	<i>For</i>
91	1-3	38	Ellis	4-30-26	\$28.33”

(Here follow a number of items similar to the above, making a total of \$800.11.)

\* \* \* \*

“DETAILS OF ASSESSMENTS SHOWN  
AS PAID ON ROLLS; NO DUPLI-  
CATE RECEIPTS FOUND, AND  
CASH NOT ENTERED ON  
CASH BOOK.

<i>Roll</i>	<i>Period</i>	<i>Unaccounted</i>
<i>Page Lot Block Addition Ended</i>	<i>For</i>	
56 W1/2 8 Dundee	4-30-25	\$40.55”

(Here follow a number of items similar to the above, making a total of \$2,242.92.)

\* \* \* \*

“DETAILS OF ASSESSMENTS SHOWN  
AS PAID ON ROLLS IN EXCESS OF  
AMOUNTS OF DUPLICATE RE-  
CEIPTS IN ORIGINAL LOCAL  
SIDEWALK AND CURB IMPROVE-  
MENT DISTRICT NO. 38

<i>Receipt</i>	<i>Period</i>	<i>Amounts</i>
<i>No. Date Lot Block Addition Ended</i>	<i>Unaccount-</i>	<i>ed For</i>
181 7-6-27 13-16 30 South Boise	4-30-28	\$52.70”

(Here follow a number of items similar to the



above, making a total of \$353.16.)

\* \* \* \*

“The accounting which follows contains all of the information in the hands of Boise City of property included in Original Local Sidewalk and Curb Improvement District No. 38 upon which the special assessment.. since the year 1928 have not been paid, and shows the disposition of the property affected and the assessment for the particular year. The following statement identifies the particular piece of property by tax number instead of legal description and in this matter the term ‘Deeded’ and the date immediately following the word ‘Deeded’ refer to the date Ada County received title to said property on account of delinquent taxes. The date indicated under the column marked ‘Sold’ means the date on which Ada County sold the property involved to a purchaser. The absence of a date indicates that the property has not been sold. The term ‘Ada County’ in the first column after the tax number indicates that Ada County is the owner of the property and the term ‘Not deeded’ indicates that either a tax deed has not been issued to Ada County on the property or that the County has received title to the property through some other source. The column on the extreme right of the page indicates the amount of the assessment against each particular piece of property for that year. Because of lack of adequate records in Ada

County pertaining to the special assessments certified, it is, in many instances, impossible to follow the exact disposition of the property involved or determine its exact status. Some of this property is sold on contract out of which the purchase price is obtained and from which it is possible in the apportionment of the purchase price thereof that a sum will be apportioned to this improvement district but we have no records to determine that.

“On the last page of this schedule is a recapitulation as of October 31, 1936, showing the amount of deeded property to Ada County, the property in the name of Ada County and the property which remains delinquent on said date on the records of Ada County.”

“1928 Tax No. Sold Sidewalk #38

#2325 Deeded 1-31-29 3-18-35 \$17.28”

(Here follow a number of items, similar to the above, except as to number and description of property and date of deed and amount.)

“TOTALS 1928

Deeded Property \$727.55

Property in name of

Ada County 1926.21

GRAND TOTAL \$2653.76”

\* \* \* \* \*

“1929 Tax No. Sold Sidewalk #38

2291 Ada County 3-18-35 \$33.99

(Here follow a number of items, similar to the

above, except as to number and description of property and date of deed and amount.)

**“TOTALS**

Deeded Property	\$452.91
Property in name of Ada County	1990.91
Delinquent property	33.88
<b>GRAND TOTAL</b>	<b>\$2477.70”</b>

\* \* \* \* \*

“1930 Tax No. Sold Sidewalk #38  
2291 Ada County 3-18-35 \$32.07

(Here follow a number of items, similar to the above, except as to number and description of property and date of deed and amount.)

**“TOTALS**

Deeded property	\$455.59
Property in name of Ada County	1934.47
Delinquent Property	53.82
<b>GRAND TOTAL</b>	<b>\$2443.88”</b>

\* \* \* \* \*

“1931 Tax No. Sold Sidewalk /38  
2222 Ada County 3-18-35 \$30.09

(Here follow a number of items, similar to the above, except as to number and description of property and date of deed and amount.)

**“TOTALS**

Ada Co. and Deeded Property \$2049.88

Delinquent Property	107.46
GRAND TOTAL	\$2157.34"
* * * * *	
"As of October 31, 1936.	
1928 Deeded, Ada County	\$2653.76
1929 " " "	2443.82
1930 " " "	2390.06
1931 " " "	2049.88
TOTAL	\$9537.52
1929 Delinquent	33.88
1930 " "	53.82
1931 " "	107.46
TOTAL	\$195.16
GRAND TOTAL	\$9732.68"

SECOND SUPPLEMENTAL REPORT  
AND ACCOUNT FILED MARCH 8, 1938  
(TITLE OF COURT AND CAUSE  
OMITTED):

"Pursuant to plaintiffs' objection to report and request for further particulars, we herewith submit the following to supplement the first report and account:

"Subdivision 'e', covering the amount certified to the officers of Ada County for collection, contains the installment certifications beginning in 1922 and each subsequent certification being made in each subsequent year thereafter to 1931, in-

clusive.

“The receipts shown in subdivision ‘f’ begin with the year 1923 and consecutively for 10 years until 1932, inclusive.

“The last above amounts are the exact portions of each installment certified which were paid. The amount.. certified as having been received subsequent do not belong to any particular installment certification but have been paid from general delinquencies or from tax sales.

“Attached hereto, marked Exhibit ‘A’, is a statement of the details of each installment of the bonds showing in respective columns the amount of ‘Principal’, ‘Interest’, ‘Taxes Paid to Clerk’, ‘Delinquent’, ‘Penalty’, ‘Certified to County’, ‘Collected and Paid by County’, ‘Accumulated Delinquent and Uncollected,’ and also includes the details of the payments made on principal of bonds and on interest thereon.

“A recapitulation of the totals disclosed in Exhibit ‘A’ attached hereto discloses the amount of assessment levied, the amount of interest levied, the amount paid to the City Clerk, the amount received from Ada County, the Amount paid out as principal on bonds, the amount paid out as interest on bonds and the amount remaining delinquent on the records of Ada County. The total amount received by Boise City is shown as compared to the amount paid out by Boise City on

principal and interest, and this difference is the only amount which Boise City could be liable for under any theory of liability of embezzlement or otherwise, and no admission of any other liability because of the embezzlement of Angela Hopper or otherwise is intended to be made in these reports and accounts or the answer except as this final accumulation and recapitulation on file shows. It is as follows:

Assessments levied per assessment roll	\$56,493.62
Interest levied per assessment roll	21,750.25
	<hr/>
Total	\$78,243.87
Amounts received by City Clerk	\$31,060.27
Received from Ada County	23,816.24
	<hr/>
Total	\$54,876.51
Amount paid out by Boise City	
on principal of bonds	\$19,539.10
On coupon and straight interest	31,932.88
	<hr/>
Total	\$51,471.98
Difference between amount paid	
in and amount paid out	\$ 3,404.53
Cash on hand, February 28, 1937	3,087.80
Amount short, difference between	
amount paid in and amount paid	
out and funds on hand	315.73



Total delinquencies, difference between amount certified to Ada County and the amounts remitted to Boise City by Ada County, including payment of \$24.36 in February, 1938	\$25,630.33
Total bonds unpaid at this date	\$37,000.00

“It is admitted by Boise City that misappropriations of Angela Hopper from the funds of the said district, as disclosed by the facts above submitted, *is* \$215.73.

“From the records of Boise City it is impossible to determine the tax sales and conveyances to and from Ada County prior to the year 1928 or subsequent to the year 1931. That such information is not contained upon the records of Boise City, but is a part of the records of Ada County, the details of which are never certified nor required by law to be certified to Boise City, and that, with the matters furnished herein, Boise City has furnished all of the facts pertaining to said Local Sidewalk and Curb Improvement District No. 38, that it is possible for it to furnish.

“Dated March 7, 1938.

“Respectfully submitted,  
 Thornton D. Wyman  
 Z. Reed Millar  
 Attorneys for Defendant”

Exhibit "A" to Second Supplemental Report and Account

LOCAL SIDEWALK AND CURB IMPROVEMENT DISTRICT NO. 38 BOISE CITY

Showing assessments levied for payment of bonds and interest, Collections and Delinquencies.

								<del>4,784.06</del>	<del>2,407.22</del>	<del>12,700.00</del>
								Certified	Collected	Accumulated
								to	and paid	Delinquent
								County	by County	and
								Uncollected		
		Principal	Interest	TOTAL	Tax Paid	Delinquent	Penalty			
					to Clerk					
1922	1st Instalment	\$ 5,649.36	\$ 3,954.55	\$ 9,603.91	\$ 4,013.71	\$ 5,590.20	\$ 549.28	\$ 6,042.13	\$ 1,677.65	\$ 4,364.48
1923	2nd Instalment	5,649.36	3,559.10	9,208.46	4,703.36	4,505.10	487.90	5,366.10	2,144.41	7,586.17
1924	3rd Instalment	5,649.36	3,163.65	8,813.01	3,776.22	5,036.79	406.80	5,575.32	2,976.19	10,185.30
1925	4th Instalment	5,649.36	2,768.20	8,417.56	3,804.87	4,612.69	456.52	5,021.75	2,407.22	12,799.83
1926	5th Instalment	5,649.36	2,372.75	8,022.11	4,162.75	3,859.36		4,784.96	2,926.03	14,658.76
1927	6th Instalment	5,649.36	1,977.30	7,626.66	2,824.78	4,801.88		4,522.81	1,797.25	17,384.32
1928	7th Instalment	5,649.36	1,581.85	7,231.21	2,536.67	4,694.54		4,742.25	2,084.00	20,042.57
1929	8th Instalment	5,649.36	1,186.40	6,835.76	2,217.42	4,618.34		4,646.85	1,981.24	22,708.18
1930	9th Instalment	5,649.36	790.95	6,440.31	1,288.30	5,152.01		4,856.11	2,350.41	25,213.88
1931	10th Instalment	5,649.38	395.50	6,044.88	1,732.19	4,312.69		3,912.65	1,328.00	
(Total)		\$56,493.62	\$21,750.25	\$78,243.87	\$31,060.27	\$47,183.60	\$ 2,001.50	\$49,470.93	\$21,672.40	\$27,798.53

PAYMENTS MADE ON PRINCIPAL OF BONDS AND FOR INTEREST THEREON

						1932	Collected
						\$	Subsequent
		Amount	Amount			1933	
		Paid on	Paid on			1934	
		Principal	Interest			1935	
		Coupon				1936	
						1937	
1, 2, 3 & 4	July 25, 1923	\$ 2,039.10	\$ 3,957.74	(July 1922, Jan. 1923)			\$ ,953.67
5 & 6	Jan. 2, 1924	1,000.00					247.68
7, 8 & 9	July 19, 1924	1,500.00	3,886.37	(July 1923, Jan. 1924)			376.68
10 & 11	Jan. 2, 1925	1,000.00					340.35
12 to 18 incl.	July 20, 1925	3,500.00	3,692.50	(July 1924, Jan. 1925)			180.66
19 to 24 incl.	July 19, 1926	3,000.00	3,447.50	(July 1925, Jan. 1926)			44.89
25, 26, 27 & 28	June 20, 1927	2,000.00				Total	\$23,816.24
29 & 30	Sept. 12, 1927	1,000.00	3,202.50	(July 1926, Jan. 1927)			\$25,654.69
31, 32 & 33	July 11, 1929	1,500.00	2,940.00	(July 1927, Jan. 1928)			
34, 35, 36 & 37	Mar. 6, 1930	2,000.00	2,887.50	(July 1928, Jan. 1929)			
			2,555.00	(July 1929, Jan. 1930)			
38 & 39	Jan. 28, 1931	1,000.00	2,625.00	(July 1930, Jan. 1931)			
			2,590.00	(July 1931, Jan. 1932)			
(Total)		\$19,539.10	\$31,784.11				
Interest without coupon			148.77				
Total			\$31,932.88				

Plaintiffs pray that the above statement of evidence be settled, approved and allowed by the court as a true, full, correct and complete statement of all the evidence taken and given on the trial of said cause, for use on the appeal taken by plaintiffs to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 5th day of August, 1938.

**RICHARDS & HAGA**  
Solicitors for Plaintiffs and  
Appellants; Residence: Boise, Ida.

ON THIS DAY Came on for consideration the matter of approval of the statement of the evidence lodged by the plaintiff, and it appearing to the court that said statement was lodged and served within the time heretofore allowed therefor by the court, and after hearing counsel for the respective parties as to the matters that should be contained in said statement, the foregoing statement is settled as a true, complete and properly prepared statement under Equity Rule No. 75, and

IT IS ORDERED By the court that the same be, and is hereby, made a part of the record herein for the purpose of plaintiff's appeal to the Circuit Court of Appeals for this circuit.

Dated this 30th day of August, 1938.

**CHARLES C. CAVANAH**  
District Judge

(Title of Court and Cause)

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## PETITION FOR APPEAL

Filed July 15, 1938

COME NOW E. H. Smith, D. N. McBrier, F. B. McBrier, Alice M. Bethel, Charles A. Owen, Morris K. Rodman, and Ethel W. Johnston, for themselves and others similarly situated, plaintiffs herein, and respectfully show that on the 23rd day of April, 1938 this court made and filed its Findings of Fact and Conclusions of Law and entered a Decree herein by which it found, decided, adjudged and decreed that there were due and outstanding certain bonds for improvements made in Local Sidewalk and Curb Improvement District No. 38 of said Boise City, of the aggregate principal sum of \$37,000.00, with interest thereon from the 1st day of January, 1932 at the rate of 7% per annum, and judgment was entered against said defendant, Boise City, for the sum of \$6,846.17, together with costs of said action and interest on said amount at the rate of 6% per annum from the 23rd day of April, 1938, said sum of \$6,846.17 and interest thereon to be prorated between the holders of said bonds aggregating, as aforesaid, the said principal sum of \$37,000.00, in which Findings of Fact, Conclusions of Law and decree, and the proceedings had prior thereto in this cause, certain errors were committed to the manifest prejudice of these plaintiffs, all of which

appears more fully and in detail from the Assignment of Errors filed with this petition;

WHEREFORE, These plaintiffs pray that they may be allowed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

DATED At Boise, Idaho, this 15th day of July, 1938.

OLIVER O. HAGA

RICHARDS & HAGA

Solicitors for Plaintiffs

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ORDER ALLOWING APPEAL

AND NOW, To-wit: On the 15th day of July, 1938, IT IS HEREBY ORDERED That the above and foregoing petition for appeal be, and it hereby is, granted, and the said appeal allowed, as prayed for, upon plaintiffs giving bond, as required by law, in the sum of \$300.00, and that the bond for said sum, submitted by plaintiffs with said petition, be and the same hereby is in all respects approved.

CHARLES C. CAVANAH

District Judge

(Title of Court and Cause)

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ASSIGNMENT OF ERRORS

Filed July 15, 1938

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COME NOW E. H. Smith, D. N. McBrier, F. B. McBrier, Alice M. Bethel, Charles A. Owen, Morris K. Rodman, and Ethel W. Johnston, for themselves and others similarly situated, plaintiffs in the above entitled cause, and, in connection with their said petition for appeal herein, say there are manifest errors in the record, proceedings, findings and decree herein, and they assign in particular the following errors:

I.

That the court erred in not holding and deciding that plaintiffs were entitled to judgment for the principal amount of the bonds held by said plaintiffs, to wit: \$37,000.00, with interest thereon at the rate of 7% per annum from the 1st day of January, 1932.

II.

That the court erred in not holding and deciding that the defendant, Boise City, had failed to comply with the provisions of Section 49-2725, Idaho Code Annotated 1932, which provides in substance and effect that all bonds of Local Sidewalk and Curb Improvement District No. 38 of Boise City were equal liens



upon the property for the assessments represented by such bonds, without priority of one over another, and in not holding that all collections made under such assessments should have been paid and applied pro rata on all bonds issued, to wit: \$56,539.10, and in not holding that said Boise City and its officers had wrongfully and in violation of law, redeemed and paid at par \$19,539.10 of said bonds, with interest to date of redemption.

### III.

That the court erred in not holding and deciding that the defendant Boise City was liable to plaintiffs for the excess, over their pro rata share, paid to the holders of the \$19,539.10 of such bonds that were redeemed and paid in full.

### IV.

That the court erred in not entering judgment against the defendant Boise City in favor of plaintiffs for the difference between the said sum of \$19,539.10, paid to the holders of the bonds so redeemed, as aforesaid, and the pro rata share of the assessments to which such bondholders were legally entitled under the laws of the State of Idaho.

### V.

That the court erred in holding and deciding that plaintiffs were entitled to judgment against the defendant Boise City only for the sum of \$6,846.17, together with costs of the action, and interest thereon from the

date of the decree herein at the rate of 6% per annum.

WHEREFORE, Plaintiffs pray that the decree of the District Court, entered herein, may be modified and the District Court directed to enter judgment in favor of plaintiffs, for the principal sum payable under their said bonds, with interest thereon from January 1, 1932.

OLIVER O. HAGA

RICHARDS & HAGA

Solicitors for Plaintiffs,  
Residence: Boise, Idaho

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(Title of Court and Cause)

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BOND ON APPEAL

Filed July 15, 1938

KNOW ALL MEN BY THESE PRESENTS: THAT, WHEREAS E. H. Smith, D. N. McBrier, F. B. McBrier, Alice M. Bethel, Charles A. Owen, Morris K. Rodman, and Ethel W. Johnston, for themselves and others similarly situated, have perfected, or are about to perfect, an appeal from the decree made and entered in said cause, and whereas said plaintiffs desire to give a bond for costs on appeal,

NOW, THEREFORE, The undersigned, American Surety Company of New York, a corporation organized under the laws of the State of New York

and duly authorized to do a surety business in the State of Idaho and to become sole surety on bonds and undertakings, does hereby bind itself and its successors and assigns in the principal sum of Three Hundred (\$300.00) Dollars, to the said defendants Boise City, a municipal corporation, and Thomas F. Rodgers, as City Treasurer of said Boise City, for the payment of all costs which said defendants or either of them may sustain, not exceeding in the aggregate the sum of Three Hundred (\$300.00) Dollars, if the said plaintiffs shall fail to prosecute their said appeal to effect and answer all costs that may be assessed or taxed against said plaintiffs in favor of said defendants, or either of them.

IN WITNESS WHEREOF, Said American Surety Company of New York has caused its name to be hereunto subscribed by its duly authorized attorney-in-fact and agent, this 15th day of July, 1938.

AMERICAN SURETY COMPANY  
OF NEW YORK

By A. J. GAMBLE

Its Attorney-in-Fact

Countersigned:

By TYLER WILLIAMS

Resident Agent.

(SEAL)

(Title of Court and Cause)

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CITATION

Filed July 15, 1938

UNITED STATES OF AMERICA ) SS.

TO BOISE CITY, a municipal corporation, and  
THOMAS F. RODGERS:

YOU ARE HEREBY CITED AND AD-MONISHED To be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal from the District Court of the United States, for the District of Idaho, Southern Division, in a suit wherein E. H. Smith, D. N. McBrier, F. B. McBrier, Alice M. Bethel, Charles A. Owen, Morris K. Rodman, and Ethel W. Johnston, for themselves and others similarly situated, are appellants, and you are appellees, to show cause, if any there be, why the judgment and decree rendered in said cause in said District Court should not be modified and corrected and speedy justice done.

WITNESS The Honorable Charles C. Cavanah, United States District Judge for the District of Idaho, Southern Division, this 15th day of July, in the Year of Our Lord One Thousand Nine Hundred Thirty-Eight, and of the Independence of the United States

One Hundred Sixty-Four.

CHARLES C. CAVANAH  
District Judge

ATTEST:

W. D. McReynolds  
Clerk

(SEAL)

SERVICE of the foregoing Citation,  
and receipt of two copies thereof,

ADMITTED this 15th day of July, 1938.

THORTON D. WYMAN

Z. REED MILLAR

Solicitors for Defendants.

Residence: Boise, Idaho.

(Title of Court and Cause)

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PRAECIPE FOR RECORD ON APPEAL

Filed July 15, 1938

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To W. D. McREYNOLDS, Clerk of the above-entitled Court:

YOU WILL PLEASE Prepare the record upon the appeal taken by the undersigned in the above entitled cause from the Decree entered therein on the 23rd day of April, 1938, such record to consist of the following pleadings and documents, to-wit:

Bill of Complaint as amended;

Answer of Defendants as amended, omitting the parts thereof stricken out by the Court on plaintiff's motion;

All motions and requests made by plaintiffs for orders directing the defendants to make and file an account;

All objections filed by plaintiffs to accounts made and filed by defendants;

The statement of the evidence settled and allowed by the Court or Judge under Equity Rules Nos. 75 and 76, or any agreed statement under Equity Rule 77;

Opinion of the Court;

Findings of Fact and Conclusions of Law;



Decree;

All papers in connection with the appeal of these Appellants, viz:

Petition for Appeal

Assignment of Errors

Bond on Appeal

Order Allowing Appeal and Approving Bond Citation

This Praecipe.

In preparing the above record, you will please omit the title to all pleadings except to the Complaint as finally amended, and instert in lieu thereof "Title of court and cause" followed by the name of the pleading or instrument.

DATED This 15th day of July, 1938.

OLIVER O. HAGA

RICHARDS & HAGA

Solicitors for Plaintiffs.

Residence: Boise, Idaho.

SERVICE of the foregoing Praecipe, Petition for Appeal, Assignment of Errors, Bond on Appeal, and Order Allowing Appeal, and receipt of copies thereof, ADMITTED this 15th day of July, 1938.

THORNTON D. WYMAN

Z. REED MILLAR

Solicitors for Defendants.

Residence: Boise, Idaho.

(Title of Court and Cause)

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CERTIFICATE OF CLERK

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I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 106 inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by Praecipe filed herein.

I further certify that the cost of the record herein amounts to the sum of \$130.60 and that the same has been paid by the appellant.

Witness my hand and the seal of said Court this 17th day of September, 1938.

W. D. McREYNOLDS,

(SEAL)

Clerk